REGD. GOA - 5

Panaji, 7th January, 1999 (Pausa 17, 1920)

SERIES II No. 41

OFFICIAL GAZETTE

GOVERNMENT OF GOA

NOTE: There are three Extraordinary issues to the Official Gazette, Series II No. 40 dated 31-12-1998 as follows:

1) *Extraordinary dated 31-12-1998 from pages 585 to 586 regarding Notification from Department of Revenue.*

2) *Extraordinary dated 31-12-1998 from pages 587 to 592 regarding Notifications from Departments of Finance, (Revenue and Expenditure Division), Home (General Division), Housing and Revenue.*

3) *Extraordinary dated 5-1-1999 from pages 593 to 594 regarding Notification from Department of Goa Legislature Secretariat.*

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Archives, Archaeology and Museum

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Order

No. 1/90-91/HA-1636

Sanction and approval of the Government of Goa is hereby conveyed for the upgradation of the post of Transcriber of Records (Rs. 5000-150-8000) in the Directorate of Archives, Archaeology and Museum, presently held by Smt. Josefina A. T. D'Souza Sapeco, to the Group B, Grade II Post as Transcriber of Records (Senior) in the pay scale of Rs. 5500-175-9000. Smt. Josefina A. T. D'Souza Sapeco, the incumbent to the post of Transcriber of Records will continue to hold with immediate effect the upgraded post of Transcriber of Records (Senior), which will be on par with the analogous post of Assistant Archivist (Grade I). This upgradation is personal to Smt. Josefina A. T. D'Souza Sapeco and will be valid as long as she occupies the said post. The post will revert back to Transcriber of Records (5000-150-8000) once Smt. Josefina A. T. D'Souza Sapeco relinquishes the charge of the said post.

This is issued with the concurrence of the Finance Department, Government of Goa, vide its notings dated 22-12-1998 in the file No. 1/90-91/HA and upon the approval of the Cabinet by circulation in the abovementioned file.

The salary of the incumbent on the post of Transcriber of Records (Senior) will be drawn under Budget Head 2205 - Art and Culture 103 - Archaeology 01 - Reorganization of Archaeology (Non-Plan) 01 - Salaries. Her pay will be fixed under F. R. 22 (C).

Dr. *P. P. Shirodkar*, Director of Archives, Archaeology and Museum and Ex-Officio Joint Secretary.

Panaji, 29th December, 1998.

Department of Labour

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Order

No. 28/23/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Industries and Labour).

Panaji, 17th January, 1992.

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IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/28/90

Shri Shaikh A. Karim — Workman/Party I
V/s
M/s Mormugao Municipal Council — Employer/Party II

Panaji, Dated: 27-12-91

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/23/90-LAB dated 28th June, 1990 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the Mormugao Municipal Council in superannuating Shri Shaikh A. Karim, Assistant Municipal Inspector, on 31st December, 1983 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of this reference a case at IT No. 28/90 was registered and notices were issued to both the parties in response to which they appeared and submitted their pleadings.

3. Party I-Shri Shaikh A. Karim (hereinafter called as the Workman) has filed his statement of claim (Exb. 2) wherein he has averred as follows:

The workman was serving in Mormugao Municipal Council, Vasco, since the last many years. He was initially appointed as a Gardener and was later promoted to the post of Asstt. Municipal Inspector, which post

he continued to hold till the alleged termination from services. There are no rules inforce in regard to the age of superannuation for the Mormugao employees. The workman was given a notice in advance dated 27th July, 1983 informing him that as per rules inforce, the age of superannuation for Mormugao employees is 58 years and the workman will be completing 58 years of age on 8-12-83 as found out from the office record of the Municipal Council. Hence, he was informed that he stands retired from 31st Dec., 1983. It has been averred by the workman that in his appointment letter, the age of superannuation has not been specified and in the absence of any such condition in the appointment letter, the order of retirement passed by Party II-Municipal Council (hereinafter called as the 'Employer') is void ab-initio. There are no standing orders specifying the age of retirement for Municipal employees and hence the workman's retirement w.e.f. 31-12-83 is void and bad in law. It has been averred that while entering in service, the workman submitted an application without relying on any documents in proof of his birth date. He was born at his native place at Ratnagiri District and he has given the approximate date of his birth. Hence, it has been averred that the date given by him in his application is not authenticate. Instead, it is his contention that his birth date as shown in the school leaving certificate should be accepted as correct. It has been further averred that the notice of retirement does not specify the dates of payment of his full and final dues as required under the Payment of Wages Act, 1936. According to him, the employer has not complied with the mandatory provisions of the Payment of Wages Act and on that ground also the order of retirement is not justified. When there was a dispute as regards the workman's birth date, he voluntarily offered for medical test and accordingly he was examined by Dr. A. L. Dias of Forensic Department who submitted his report on 28-12-83 stating therein that in his opinion the workman's age was 52 and the same should be accepted as correct. Thus, according to the workman, in view of the school leaving certificate supported by the Medical Expert's opinion, his correct birth date is 10-12-32, which if accepted would show that he had not completed the age of 58 years on the date on which the employer-Municipal Council proceeded to retire him from 31-12-83. Hence he has prayed that the order of retirement passed by Municipal Council should be struck down and he should be given all legal reliefs.

4. Party II-Employer by its written statement at Exb. 5 resisted the workman's claim contending inter alia as follows:

The employees of Mormugao Municipal Council are primarily governed by the provisions contained in Goa, Daman and Diu Municipalities Act, 1968 and also by the Central Civil Services Rules as made applicable to the establishment of the Municipal Councils. Under the said rules, the employees in the Municipal Council are to retire on completion of 58 years. It has been contended that the workman's age was noted in his service book on the information furnished by the workman while entering into service. Subsequently, the said workman had applied for being trained as a 'Workers-Teacher with the Central Board for Workers' Education, and at that time also he furnished his age which corresponded the entry in his service book. The workman's application was duly signed by him below the particulars furnished by him. Subsequently, the workman had also applied for a passport and he had also filed a nomination form wherein he gave his birth date as noted in the service book. Thus, as per the office record in the Municipal Council, the workman was to complete 58 years on 8-12-83 and hence he was to retire from 31-12-83. However, on 28-8-83 the workman made a representation to the Municipal Council praying therein for extension since he had some financial problems. However, his prayer was not accepted. Thereafter, again on 23-12-83 the workman made a second representation contending therein that his age was incorrectly recorded and that he should be given an opportunity to substantiate his correct age on the basis of medical test. Thereafter, he appeared before the medical expert and furnished his report on 30-12-83, which was forwarded to the Director of Municipal Administration on 4-1-1984. While the Director of the Municipal Administration was seized of the matter, the workman was continued in service, upto 30-6-84. During this extension period the workman produced an alleged school leaving certificate in proof of his correct birth date. However, there was no evidence to coroborate the correctness of the school leaving certificate produced by the workman. Hence on 3-7-84 the workman was informed that his services stood terminated from 30-6-84. Thus, on the basis of the above referred contention, it has been submitted that the workman's claim deserves to be dismissed with costs.

5. Thereafter, the workman filed his rejoinder at Exb. 6 wherein he challenged all the contentions taken up by the Municipal Council in his written statement at Exb. 5 and reiterated his claim. He has again reaffirmed his assertions that in view of the school leaving certificate and the opinion given by the medical expert, his correct date of birth is 8-12-32 and hence the same should be accepted and the order of retirement passed against him should be held as invalid and in-operative and he should be given the necessary reliefs.

6. On these pleadings, I framed the following issues at Exb. 7:

ISSUES

1. Does Party No. I, S. A. Karim prove that his correct birth date is 10-12-1932 but it was wrongly entered into his service book?

2. If yes, whether the order of retirement w.e.f. 31-12-83 is bad in law?

3. If yes, whether Party No. I, S. Karim is entitled to any relief?

4. What award or order ?

7. My findings on the above issues are as follows, for the reasons stated below:

1. In the affirmative
2. In the affirmative
3. As stated in para. 15
4. As per final order below

REASONS

8. The rival contentions of the parties to this dispute has been stated in the opening paragraphs of this judgement which need no further repetition. Now, the evidence adduced in this case consists of the testimony of the workman at Exb. 9 and he has also produced relevant documents. On behalf of Municipal Council, its Chief Officer by name D. P. Anvekar has been examined at Exb. 20 and he has also produced some documents. Now, the only question that arises for determination in this dispute is to find out the correct birth date of the workman. Now, before proceeding to consider the above referred crucial point involved in this case, I think it necessary to state in brief some of the facts which are either admitted or which can be otherwise be taken as duly proved from the evidence on record.

9. Party I-Workman, Shri Shaikh A. Karim started his service with Party II- Municipal Council from the year 1959. At the time of his appointment, he was not given any order or letter as such but he was appointed as a gardener. Thereafter, in the year 1974, he was promoted to the post of Asst. Municipal Inspector (Exb. 10). At the time of entering into service, he had not submitted any authenticate proof about his birth date e. g. birth certificate or school leaving certificate. However, on the oral representation made by him, it seems that his birth date was taken to be 8-12-1925 and noted in the service book maintained by the Municipal Council. The same date was taken to be correct and on that basis a notice of retirement was served upon the workman. It is a common ground that the age of retirement for Municipal servants is 58. The copy of the said notice is at Exb. 11 which in substance shows that Shaikh A. Karim was completing his 58 years on 8-12-83 as per the records available in the Council and hence he was informed that he would stand retired on 31-12-83. On receipt of this notice the workman made a representation by his letter dated 20-8-83 vide Exb. 17. In the said representation, he stated that he did not have any birth registration and the birth date given to the office was simply approximate. In the said representation, he also prayed for extension of service as he had some family problems and financial liabilities. Thereafter, it seems he made one more representation dated 8-9-83 to which a reply was sent by the Municipal Council by its letter dated 21-12-83. To this reply the workman again sent a letter dated 23-12-83, addressed to the Administrator, Municipal Council. In

the said letter, he stated that he will not be completing 58 years of age on 31-12-83 and that his elder brother is still working in M/s Larson & Tubrou, Bombay. He further submitted that he will prove his age after medical examination as the age stated in the office record is not correct. (Vide Exb. 12). To this letter the Municipal Administrator sent a reply which can be found at Exb. 13. It is dated 23-12-83. In this Memorandum, the Municipal Administrator informed the workman that as per the service book, his birth date is 8-12-25 and accordingly he stands retired w.e.f. 31-12-83 as informed under the notice dated 27-7-83. However, it has been further informed to the workman as follows:

"Therefore Shri Shaikh Abdul Karim is hereby informed to produce the medical evidence of forensic from Goa Medical College before 31-12-83, failing which he stands retired w.e.f. 31-12-83 as per the notice dated 27-12-83."

He was also informed that the acceptance of the medical report will be subject to the approval of the Director of Municipal Administration.

10. Pursuant to the above referred memo, the workman submitted for medical examination in Goa Medical College before Doctor A. L. Dias who after examination, submitted his opinion which is at Exb. 14. In the said report the medical expert opined as follows:

"In my opinion, the age of 52 years as stated by Shri Shaikh A. Karim on 26-12-83 may be considered as correct on the basis of all above findings."

Thereafter the workman approached the Director of Municipal Administration by name Shri Nair and explained to him his grievance. The Director advised him to produce a school leaving certificate and accordingly he produced the same which is at Exb. 15. The school leaving certificate shows his birth date as 10-12-32. However, that was not accepted and eventually the workman came to be retired from 30-6-84. Now although initially, there was an order of retirement effective from 31-12-83, still there was a dispute as regards the workman's age and hence he was given extension till the end of June, 1984. Eventually, on 30-6-84 the workman was retired and hence the workman has come before this Tribunal. These are some of the established facts on the basis of which, I shall advert myself to the submissions made by the learned Advocates for both the sides.

11. Now, it is a common ground that when the workman entered into his service he gave his birth date as 8-12-25 which was duly recorded in his service book and the same continued in future for a very long time till he was served with the notice of retirement. Now, the notice of retirement was based upon the birth date appearing in the service book and hence the notice was perfectly correct in giving a direction for retirement w.e.f. 31-12-83 as the workman was completing 58 years of age. However, it is the say of the workman that when his service record was prepared, he had not produced any authenticate evidence in proof of his correct birth date. It was also not demanded by the Municipal authorities and hence he gave his birth date approximately. However, subsequently, when he made a grievance against the notice of retirement, he was directed to appear before the medical expert for ascertaining his age and accordingly the workman appeared and submitted the medical expert's report which is at Exb. 14. In the earlier paras, I have reproduced the medical expert's opinion and hence it need not be repeated. In substance the medical expert's opine that the workman's age at 52 in the year 1983 be accepted as correct. Added to this, the workman also succeeded in producing a school leaving certificate which is at Exb. 19. It is the school leaving certificate issued by Central Primary Urdu School at Sawantwadi in erstwhile Ratnagiri District. In column No. 4 the birth date of Shaikh A. Karim S. Hassan is shown as 10-12-82. He was admitted in school on 15-6-41 and he left the school on 4-8-83 while he was a student learning in 3rd Standard. Now, inorder to ascertain the correctness of the school leaving certificate, the original record from the concerned school was also called and accordingly the same has been produced at Exb. 22. It is in Urdu but its correct translation has been given by the Head Master who had produced the General Register on the basis of which school leaving certificates are issued. It clearly shows that the workman's birth date as 10th December, 1932. He was admitted in school on 15th June, 1941 and he left the school on 4th August, 1943, when he was learning in 3rd Standard. Now, there is no reason why the above referred two documents should not be accepted in proof of the correct birth date of the present workmen which seems to be 10-12-32. There is one more check to arrive at the above referred conclusion. The workman was admitted in school in the year 1941 when his age was 9 years and he left the school in the year 1943 when his age was 11 years and when he was learning in 3rd Std. If he were born in the year 1925, he would have been student aged about 16 years when he was admitted in the school in the first standard. That does not appear to be reasonable. It is too much to think that a boy of 16 years was admitted for the 1st time in the 1st standard, if he were born in the year 1925. Instead, it appears to be more logical that since he was born in the year 1932, he was admitted in the 1st standard at the age of 9 years. Moreover, there is absolutely nothing to cast doubt on the correctness of the entries made in the school register, more than 50 years back, on the basis of which a school leaving certificate was issued. Now, nothing has been proved nay not even suggested to the workman that his birth date was not correctly recorded in the school register. Hence, there is no reason why implicit reliance should not be placed on school leaving certificate wherein the workman's birth date is shown as 10-12-1932.

12. Added to the above referred documentary evidence, we have also the medical expert's opinion which, it may be recalled, clearly shows that when the workman was examined in the year 1983, was found to be aged 52 years. Now, it may be recalled that when there was no documentary evidence available with the workman, the employer himself directed him to submit for medical examination as can be seen from the Memo at Exb. 13. Accordingly, the workman appeared and submitted the report of the medical expert which is certainly in his favour. Hence, even in the absence of any documentary evidence like school leaving certificate, there should have been no difficulty for the Municipal Authorities to accept the medical expert's opinion, which was infact demanded by them. However, that was not done although the workman produced a convincing documentary evidence in proof of his birth date still that was not accepted and hence the workman was retired w.e.f. 30th June, 1984, when in fact he had not completed the age of 58 years.

13. Now, it has been urged on behalf of the Municipal Council that during the course of service, the employee was sent for training and at that time he had to submit an application which is at Exb. 16. Now the copy of this application has been produced but the column of 'Date of Birth' is blank i.e. no birth date has been noted in column No. 2 of this application and the workman's age has been stated as 40 years. Now, the Chief Officer D. P. Anvekar in his evidence at Exb. 20 has also admitted that Exb. 16 does not state the correct birth date of Party I and same is the case with the other documents. Now, to this application, it seems that an extract from his service record is attached which obviously shows workman's birth date as 8-12-25. However, at the cost of repetition, I would say that in the application for admission the workman did not again note his incorrect date and the said column is totally blank. Hence, it is not possible to accept the submission made on behalf of the Municipal Council that during the course of employment the workman again reiterated his birth date as shown in the service book.

14. Thus, considering the oral and documentary evidence adduced by the parties in this case, I have come to an irresistable conclusion that the workman has succeeded in proving his birth date as 10-12-1932 and as such he had not completed the age of 58 years which is the age for retirement for municipal employees. He was given an extension of 6 months and finally he came to retire on 30-6-84 on which date also he had not completed 58 years. Thus, according to him the workman would have attained the age of 58 years on 10-12-90 and as such he should have been retired on 31-12-1990.

15. In view of my conclusions in the foregoing paragraphs it follows that the workman has succeeded in proving the 1st issue and hence I answer the same in the affirmative. In view, of this conclusion, it further follows that the order of retirement passed by the Municipal Council w.e.f. 31-12-83 is bad in law and in view of the workmen's birth date which is proved to be 10-12-1932 he would have completed the age of 58 years on 10-12-1990 and as such he should have been retired on 31-12-90. However, he was retired on 30-6-84 and as such he has been deprived of the monetary benefits to which he would have been entitled to, if he had continued in service till 31-12-90. I, therefore direct Party II-Municipal Council to make good the loss sustained by the employee on account of his premature retirement w.e.f. 30-6-1984 by paying him his full back wages i.e. salary and other incidental monetary benefits to which he would have been entitled. I therefore answer issue No. 3 accordingly and pass the following order:

ORDER

It is hereby declared that the action of the Mormugao Municipal Council in superannuatiag Shri Shaikh A. Karim, Assistant Municipal Inspector, with effect from 31st December, 1983 is not legal and justified; and it is hereby declared that the said workman shall be deemed to have retired on 31-12-1990; and Party II-Mormugao Municipal Council shall pay to the workman his full salary and other monetary benefits, the which he would have been entitled, had he not been made to retire on 31-12-84.

No order as to costs.

The Government be informed accordingly.

Sd/-

(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 27th January, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/14/82

Workmen — Party I
V/s
M/s Zuari Marine Industries Pvt. Ltd. — Party II

Workmen represented by Adv. S. N. Karmali.

Employer represented by Adv. B. G. Kamat.

Panaji, Dated: 27-12-1991.

AWARD

In exercise of the powers conferred by Sub. Sec. (2) of sec. 10 of the Industrial Disputes Act, 1947 the Government of Goa, Daman and Diu under its order No. IRM/CON/(50)81 dated 12th March, 1982 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Zuari Marine Industries Private Limited, Vasco-da-Gama, Goa, in terminating the services of following 9 workmen by way of dismissal w.e.f. 6-3-1981 is legal and justified ?

NAMES OF THE WORKMEN

1. Shri Milagres Godinho.
2. Shri Benedict Fernandes.
3. Shri Suresh Gavas.
4. Shri Yeshwant Sawant.
5. Shri Manguesh Pawar.
6. Shri Kabasingh Naik.
7. Shri Roque Quadros.
8. Shri Chandrakant Mahale.
9. Shri Caetano M. D'Silva.

If not, to what relief the said 9 workmen are entitled to ?"

2. On receipt of this reference, a case at serial No. IT/14/82 was registered and notices were issued to both the parties, in response to which they appeared and submitted their pleadings.

3. Party-I-Workmen of M/s Zuari Marine Industries Pvt. Ltd., have filed their statement of claim wherein they have averred as follows;

Party II-M/s Zuari Marine Industries Pvt. Ltd., Industrial Estate, Sancoale (hereinafter called as 'Employer-Management') is an industry manufacturing and repairing various marine parts. The said industry was installed in the year 1974 and started production from 1975. The management employed about 75 workers in various categories like Fitters, Welders, Shapers, Store-Keepers, Furnace Operators, Electricians, Moulders, Carpenters, Grinders and Khalasis to serve on a consolidated wages ranging from Rs. 100/- to Rs. 485/- fixed as per the whims and fancy of the management, without there being any basis, and they were also not commensurate with the work undertaken by the workman. There were no other allowances payable except the over-time, which was also left to be calculated by Supervisors, as per their whims. As the workmen were not happy with their lot, they approached the management with their demands for enhancement of wages. However, there was no response; and hence the workmen organised themselves into a trade union; which was duly registered at Sr. No. 181 in the month of January, 1981. Under a letter dated 4th November, 1980 the union submitted a charter of demands claiming enhanced wages for various grades and other allowances with retrospective effect from 1975. On two occasions, discussions were held between the management and the union leaders wherein the management was agreeable to the scales of pay given by the Union, payment of V. D. A. at the rate of 0.50 paise per two points. However, the Union bargained for Rs. 1.25 p. per two points. However,there was difference of opinion on the question of liking the neutralisation to the Consumer Price Index, and hence further discussions were bogged down and there was a talk about granting interim reliefs. The management offered at first Rs. 20/- per workman; and finally Rs. 50/- per workman. However, the union was not satisfied and their claim was Rs. 250/- per month and Rs. 100/- per month as minimum interim relief from 1-1-1981. However, after

further re-consideration the union informed the management that at least Rs. 80/- p. m. should be given to every worker, but the management refused to accede to the union's request, and hence the proposal remained as it was.

4. During the course of discussions and from the information received from the active members of the union, it was found that the Director of the Company by name Shri R. V. Neurekar and the works Manager Shri E. I. Marbon were not happy with the workers since they organised into a trade union, and hence they entertained a bias against the workman and thus they acted in such a manner so as to create a psychological fear in the minds of the other members. On 27th December, 1980, the management having realised that the workmen were dis-contended brought a Truck to the factory premises at sancoale and loaded several marine parts. When workers questioned the act of the management, they were threatened and even police force was called. Similar instance also occurred on 1st Jan., 1981.

5. On 2nd Jan., 1981 at about 12.00 noon when the workmen were in the factory, about 20 persons came to the factory and challenged the workmen to come out of the factory and threatened them to assault. That time Shri Neurekar; the Director of the Company was actually present who asked those persons not to do anything during the working hours of the factory. Thereafter on 3rd Jan., 1981 the management placed as many as 12 workers (named in para. 9 of Exb. 2), under suspension alleging that they were guilty of major mis-conducts. On 5th Feb., 1981 a notice was displayed on the notice board by the management. On 10th and 15th of Jan., 1981 charge sheets were issued to the workmen; but they did not accept the same. Hence the charge sheets were sent by Registered post, but the same were refused by the workers and hence they were sent back. On 9th Feb., 1981 the workmen informed the management that the charge sheets were not refused and requested that the same should be given in the language understood by the concerned workmen. To this request, the work's Manager agreed. The workmen also informed the management that they were prepared to accept the charge sheets worded in the language understood by them. However, if the management persisted to hold an ex-parte enquiry, the same should be proceeded with at the risk of the management and the same would not be binding upon the workmen.

6. Thereafter on 12th Jan., 1981 discussions were made before the Commissioner, Labour and Employment. In the meantime the management conducted a so called ex-parte enquiry and ultimately decided to dismiss all the workmen from service from 6th March, 1981. A notice to that effect was issued which was dated 4th March, 1981. In addition to the workmen who were suspended, 3 more workers named in para. 12 of the claim statement were also dismissed.

7. It has been submitted that although the management held ex-parte enquiries still they did not sent a copy of enquiry or even the notice of action proposed to be taken against the workmen or union to enable them to meet the same by appropriate reply. Thus, it is the say of the workmen that the dismissals and/or discharge was resorted to in violation of sec. 33 of the I. D. Act as the conciliation proceedings were pending before the appropriate authority. In the meantime, a settlement was arrived at before the Commissioner, Labour and Employment on 26th March, 1981 and amongst various terms it was agreed to refer the dispute of dismissal/ discharge or workers and payment of wages for the period of alleged strike to this Tribunal. However, the Government has referred the dispute regarding the termination of services to this Tribunal for adjusdication. Although the dispute regarding other matters was not referred to the Tribunal, still both the management and the union had signed the necessary application for reference.

8. Thus, on the aforesaid allegations, it has been contended by the workmen that the action of the management in dismissing the above named workmen from service is illegal, malafide and bad in law, which was intended to victimise the workmen who were the active members of the union. The action is also violative of the Sec. 33 of the I. D. Act. Hence it is prayed that the necessary reliefs of reinstatement in service with full back wages and other monetary benefits be awarded to the workmen.

9. Party II-M/s Zuari Marine Industries Pvt. Ltd., by its written statement at Exb. 3 resisted the workmen's claim contending interalia as follows:

It is not correct to say that only 70 workers were employed by party II in various categories as claimed in the statement of claim. According to the management; 90 workers were appointed in various categories except that there was no category of Khalasis. It is denied that the consolidated wages ranged from Rs. 100 to Rs. 485/- and it is further denied that the wages were fixed as per the whims and fancy of the management. In fact, the wage distribution was worked out by the management on region--cum-industry basis and depending upon the skill and compentence of the workmen, the over time wages also were properly calculated. It is denied that the workers were unhappy over the wage structure. However, when the workmen approached the management for upward revision of the wage structure, they were informed cordially by the management that the time was not matured for upward revision of wages because their existing wages were just and fair, as compared with the wages of comparable units. It is true that union submitted a charter of demands and it is also true that discussions were held for considering the workmen's demands. However. according to the management, the demands made by the union were unrealistic and preposterous and the same could not have been accepted by the management as the industry unit was still in its infancy, and as such could not have borne such a large financial burden by acceding to the union's demands. However, the management offered a rise of Rs. 50 p. m. to every worker with assurance that the management could review the position after seeing the Company's progress during the first quarter of 1981. However, the union turned down this reasonable offer and hence it has been contended that the union itself created unrest among the workers by putting forward fantastic demands and finally brought about crisis in the factory by its mischievous attitude. In fact, the Director and the Works Manager were not opposed to the workers forming a trade union. It has been contended that the workers adopted a method of 'Go-Slow' and thereby the Company's production affected with the result that the employer was unable to meet the orders of the customers. On 27th December 1980 one of the customers - M/s Mangala Engineering Works Pvt. Ltd., Bombay, brought a truck in the factory, and requested the management to allow them to lift the job un-finished as they could not tolerate such long delay whereby they suffered heavy monetary losses. Since the present workmen did not cooperate in loading the materials in the truck, the same was done with the help of others. As the workmen were obstructing the loading operation the management was required to seek police help. On 3rd Jan., 1981 about 20 or so persons came to the factory when Mr. Neurekar was not present. These 20 or so persons were trying to enter the factory premises and hence security personnel and Police Officials were posted to prevent them. They were shouting, abusing and threatening the workmen who were doing their Job. That time, Shri Neurekar told the workers that he would not allow them to enter into the factory because the incident of assault had taken place outside the factory premises and further told them that the process of law has been set in motion for taking action against the calprits. That time, the workmen indulged in abusive language against Shri Neurekar and the Works Manager Mr. Maben. The workers even threatened to set the factory on fire. It is true that the 9 workers named in the statement of claim were put under

suspension but it is denied that the reasons for their suspension was not disclosed to them. If fact, a letter dated 3rd Jan., 1981 is clearly eloquent in this behalf. It is denied that the charge sheets were not furnished to the workmen and they insisted on giving copies of charge sheets in their own language. It is denied that the proper opportunity was not afforded to the workmen to participate in the enquiry. In fact every opportunity was given to the workmen to defend themselves but they failed to avail of the said opportunities. It is therefore contended that the proper disciplinary procedure was adhered to, by the management and that there was no violation of principles of natural justice. As the union did not co-operate with the management the enquiries were required to be completed and accordingly they were completed by following the necessary procedure. Thus, it is contended that the enquiry held against the workers was perfectly legal and justified, and it did not offend the principles of natural justice. Hence it is prayed that there is no substance in the demands made by the workmen for reinstatement and other reliefs and hence their claim should be dimissed forthwith.

10. The workmen thereafter filed a rejoinder wherein they reiterated their assersions made in the statement of claim and further controverted the management's several contentions taken in its writtten statement. Finally, it was also contended that since a specific contention has been taken that the enquiry held against the workers is not legal and proper, an issue in this behalf be framed and the same should be treated as preliminary issue.

11. On these pleadings my learned Predecessor Dr. Renato Noronha framed the following issues:

ISSUES

1. Whether the employer proves that the inquiry held is fair, proper and with due compliance of the provisions of law ?

2. Whether the Union proves that the inquiry held by the employer is in violation of the principles of natural justice and of the established norms and the penalty imposed is only victimise the concerned workmen for their union activities ?

3. Whether the Union proves that the dismissal and/or the discharge was resorted to by the employer in violation of section 33 of the I. D. A., 1947 when conciliation proceedings were pending before the appropriate authority ?

12. He directed that issue no. 1 to 3 shall be treated as preliminary issues and accordingly they were heard and my learned Predecessor was pleased to hold that the domestic enquiry held against the workers was not fair and proper and accordingly he gave his findings on 9-12-1985 which can be found at Exb. 7. In view of this state of affairs the only issue that survives for consideration is one which has been referred to this Tribunal in its reference and which has been reproduced in the opening paragraphs of this judgement which needs no further repetition.

13. My finding on the above issue is as follows for the reasons stated below:

1. In the negative

REASONS

14. The rival contentions of the parties to this dispute have been stated in the opening paragraphs of the judgement which needs no further repetition. In order to substantiate their rival claims, parties have led both oral and documentary evidence. On behalf of the workman 7 workmen out of 9 have examined themselves and they have also examined Caetano D'Silva who is the Secretary of the Union. The employer has examined in all 4 witnesses and has also produced the relevant documents. Now, initially an objection has been raised on behalf of the workman that in the written statement itself or the rejoinder filed by the management, a specific contention has not been taken to the effect that in the event if the domestic enquiry is set aside as being not fair and proper then the employer should be given an opportunity to lead evidence in proof of the charges levelled against the workman. Hence it has been argued that the additional evidence led on behalf of the employer should not be considered and there should have been a composite trial for the determination of the additional issue as also the main issue referred to this Tribunal. However, at the outset, it will have to be stated that there is no substance in the aforesaid submission which have been made by Shri Karmali, the learned Advocate for the workmen. Now, it is a settled law enunciated in several rulings that if the domestic enquiry is held to be not fair and proper by the Tribunal, the employer has a liberty to lead evidence in proof of the charges levelled against the workman, which would justify the impugned order of dismissal or termination of the workman. Besides, after the findings on the preliminary issues were declared by my learned Predecessor, an application was submitted on behalf of the employer seeking permission to lead independent evidence in proof of the charges levelled against the workman. That application has been allowed by my learned Predecessor and the objection taken by Shri Karmali for the workman has not been upheld and hence both the parties led additional evidence in proof of their rival contentions. In view of the matter, I hold that the 1st objection raised by Shri Karmali has absolutely no substance and the same deserves to be rejected.

15. That takes me to consider the evidence led by both the sides on the material issue. Now, the allegations on the basis of which a domestic enquiry was held wherein substance to the effect that the 9 workers above named were guilty of intimidation and assault on the officers of the company on 31st December, 1980. Now, the evidence on record discloses that after the workers joined an union, they gave a charter of demands over which there were discussions. However, inspite of that fact the workers resorted to 'Go-Slow' movement and hence the production as well as the delivery of finished goods were withheld. On 27th December, 1980 one truck was brought for loading some articles for which the assistance of the workers was sought. However, it was not given and then the employer had to do the work of loading of goods in the truck by means Supervisory staff. However, the truck was obstructed after it was loaded and hence the employer was required to seek Police help and accordingly with the help of police officers the truck went away from the factory premises. However, it seems that the workers were annoyed by the aforesaid act done by the employer and hence it has been alleged that some of the workers including those in the present reference intimadated the Company's officers and directed them to tender apology by kneeling down. The Company's officers had to obey the directions given by the workmen. However, after this incident was over the matter was reported to the higher officers of the Company but no show cause notice was issued to any of the workers who had allegedly intimidated the company's officers. There was also no complaint lodged with the Police in regard to this incident. However, thereafter in the evening of 31st December, 1980 at about 5.45 p. m. or 6.00 p.m. it has been alleged that the workers named in this reference formed a group or unlawful assembly, to use the correct legal term, with common intention to assault or to belabour the company's Officers. It has been alleged that two Officers of the company were actually assaulted by the above named workers and two persons who tried to intervene were also not spared. They were also assaulted. After this

incident was over, the matter was reported to the Police and a complaint was lodged which was investigated by the Police Officers and eventually the 9 workers named in the reference were charge sheeted and ultimately prosecuted in the Court of the learned Judicial Magistrate First Class at Vasco. Now, the charge levelled against these 9 workers before the Magistrate's court was in substance to the effect that on 31st December, 1980 at about 5.15 p. m. these 9 workers formed an unlawful assembly and pursuant to the common intention of assault the company's officers were actually assaulted and voluntarily caused simple hurts to the company's officers. Now, this case was proceeded with before the learned Magistrate who on considering the evidence led by the prosecution ultimately found that the charges levelled against the workmen were not at all proved and eventually by his order (Vide Exb. w-5) dated 24-7-87 he acquitted all the 9 workers.

16. Now, it has been urged by Shri B. G. Kamat for the employer in para. 17 of his written arguments that the plain truth is that the matter was not carried to its logical conclusion by the Prosecutor and the case was dropped as can be seen from Exb. w-5. Hence he has concluded that the workmen were not acquitted. However, on reading the judgement of the Trial Magistrate, it clearly seems to me that no sufficeint or cogent or convincing evidence was led before him which ultimately culminated in the order of acquittal passed by him. Now, is the final order by him undoubtedly one of acquittal hence it is not possible to accept the submission made by Shri B. G. Kamat for the employer. Now, the judgement of the Criminal Court has a considerable relevance for determination of the main issue which has been raised in this proceedings. The judgement by itself would not go to show that the workers were innocent. None the less, an order of acquittal passed by a competent Court disproving the charges levelled against the workmen which are also the subject matter before the Tribunal has undoubtedly a considerable relevance as urged by Shri Karmali. Hence, I hold that the fact that the workers were acquitted by the learned Magistrate clearly goes to show that the allegations made by the employer were not substantiated by any cogent evidence. Moreover the perusal of the Criminal Court's judgment further reveals that in the Magistrate's court one Medical Officer was examined besides one V. G. Majaliker. The learned trial Magistrate has also observed, "Summons were issued to the other main witnesses on several occasions but they did not remain present," and observing as above, he eventually passed an order of acquittal. Now, before this Tribunal Dr. Kamat has been examined besides Shri Kiran Naik and V. J. Majalikar. Dr. Kamat was not a witness for the prosecution in the Criminal Court and Kiran Naik who is the main or star witness, who claims to have been assaulted by the workers did not appear before the Magistrate's Court. Now, the fact remains that although sufficient opportunity was given to the witnesses on behalf of the employer to lead their evidence, still they did not remain present in the Criminal Court and that circumstance, as urged by Shri Karmali, clearly leads to the only inference that there must not have been any substance in the allegations made by the employer against these workers and hence the main witness for the alleged victim of assault did not figure as witness for the prosecution in the Criminal Court. Moreover, as I have stated earlier, although Dr. Kamat has been examined in this Tribunal, still he was not a witness for prosecution in the Criminal Court and instead the Medical Officer attached to the Primary Health Centre was examined. In view of this state of affairs, it further follows that the evidence given by Dr. Kamat will have to be appreciated with greatest care and caution. It is under these circumstances I now proceed to consider the evidence led before this Tribunal by the parties to this dispute.

17. Now, the initial burden of proving the alleged misconduct is obviously upon the employer. Out of 9 workers 7 workers have examined themselves and they have also led the evidence of Union's Secretary. The evidence of seven workers namely Shri Yeshwant Sawant, Benedict Fernandes, Manguesh Pawar, Chandrakant Mahale, Suresh Gawas, Kubasingh Naik and Caetano M. D'Silva, is practically identical and all of them have in one voice denied the allegations of intimidation and assault on the Company's officers on 27th and 31st December, 1980. As against their evidence, the employer has examined four witnesses. The first witness examined by the employer is Shri R. V. Neurekar who claims to be Director incharge of M/s Zuari Marine Industries Pvt. Ltd. Now, he has spoken about the 'go-slow' attitude adopted by the workers after they formed an union. Thereafter he has stated that one truck in which some goods were loaded was obstructed by the workmen. However, with the Police help the obstruction was removed. Thereafter he has spoken about the incident which took place in the evening of 31-12-80. However, it is a common ground that this witness was not actually present at the place where the alleged incident of assault took place. His evidence only discloses that the victims of alleged assault came and reported to him and hence the matter was reported to police. In his cross examination, he has admitted that a criminal case filed against 9 workers in Vasco Court ended in their acquittal. He has also admitted that there are no standing Orders made applicable to his factory. Thereafter he has admitted thus: "It is possible that I had not given any reason of suspension in the letter of suspension.". Thus it is evident that although these workmen were suspended, still the reason for their suspension was not communicated to them. Thereafter the charge sheet was prepared stating therein that the workers were guilty of obstruction to the truck, criminal intimidation and assault. Now, in so far as this witness was not an eye witness to the incidence in question, his evidence is of very little assistance to the employer to prove the alleged misconducts.

18. The 2nd witness examined by the employer is Dr. Anand D. Kamat. His evidence discloses that he has his Hospital in the same building where the office of Zuari Marine Industry is situated. He has also admitted in his cross examination that he is well acquainted with R. Neurekar (the first witness), since the last 12 years and that shows that he is certainly interested in the management. His evidence discloses that on 31-12-80 some 5 employees of the company were brought to his Hospital for treatment for injuries and almost all of them had bleeding injuries. All of them were given first aid and were allowed to go. Thereafter he submitted his bill to the company and received his fees at Rs. 120/- in respect of which there is a bill at Exb. E-5. In his cross examination he has admitted thus: "It is true that excepting this bill, I have no other records showing that the five patients were examined and treated by me in the evening of that day". Thus he has not produced any certificate showing the nature of injuries alleged to have been sustained by the 5 persons. He has also not named all the five injured persons except one. He has admitted that the bill produced by him is not the bill of his hospital but it is his personal bill for the OPD. He has also admitted that although he received the fees from the company still he did not enter the same in the account book. He has also admitted that he does not remember to have given any receipt in token of having received Rs. 120/-. Now, he was dealing with a company and as such the person who tendered his fees must have normally insisted upon a receipt. However, no such receipt is forth coming. Had it been given to the person who had tendered the cash, then I think the employer would have been in a position to produce the saame on record and if it were produced, then perhaps it could have been concluded that Dr. Kamat had really treated that five persons and were given the first aid. This Doctor has also does not have the office copy or the duplicate copy of Exb. E-5. Over and above, the other evidence discloses that the injured persons were examined in the Primary Health Centre. This witness was also not a witness for prosecution in the Criminal trial against the workers. It has been submitted by Shri Karmali in his written arguments at para. 7 that in the criminal proceedings a Doctor from

Chicalim hospital by name Dr. Ramesh Babu was cited as a witness for the prosecution. Thus, considering all these pitfalls in the evidence of Dr. Kamat, I have come to an irresistable conclusion that his evidence invokes absolutely no confidence and hence I reject the same.

19. Then, there is the evidence of Kiran Naik who is at present serving as a Production Manager. He has deposed to the incident which took place on 27th December, 1980. He has deposed that one truck was to be loaded. However, the workers refused to load that truck and hence it was done by the members of the supervisory staff. However, when the truck was about to leave the workers in the 1st shift who were waiting outside obstructed the truck and hence police help was called and then the truck was removed. Now, according to him, the 2nd incident took place on 31-12-80 at about 5.15 p. m. That time the 1st shift was over at 4.00 p. m. and when he was about to go to the canteen, he saw a group of workers coming from the opposite direction which was led by Rock Quadros. This Rock Quadros approached and accosted him in konkani and asked him as to why he had done the work of loading. Thereafter he gave him a fist blow and by that time the other workers also mal handled him. Thereafter he has named some workers who actually gave him kicks and blows. According to him this incident was going on for about 5 minutes. Thereafter he reported the matter to R. Neurekar and he then took him to the Police Outpost where they were directed to go to Vasco Police station. Thereafter he has stated, "At the instance of police, I was taken to the Hospital where I was given treatment". He has finally stated that he took treatment for some days in the hospital and for some days in the Private Clinic. Very significantly, he has not stated that Dr. Kamat gave him first aid. Now, he has been very searchingly cross examined by Shri Karmali and substantial admissions have been brought on record which would go to show that he is not stating the truth on the material point. In the first instance, it will have to be stated that this witness claims to be a victim of alleged assault and as such his evidence would have assumed greatest importance if he were examined in the criminal trial. However, in his cross examination he has admitted that he attended the criminal court once or twice but thereafter he did not go to the Court for which he has given an excuse that he had work in the factory. He has also stated that he had not received any summons from the Magistrate's Court. However, it may be recalled that in the judgement of the learned Magistrate there is a reference that although witnesses were summoned, still they did not appear. In fact at the cost of repetition, I would say that he was the main witness who claims to have been assaulted by the workers and as such the employer or the prosecution ought to have insisted for recording of evidence of this witness. However, he was not examined. He has also admitted that after this incident he was promoted as a Production Manager in 1984. He has denied that he has got good relations with Neurekar and hence he has come to depose in this case in favour of the company. However, very significantly, in his cross examination he has given candid admission by saying, "I was all alone when the workmen assaulted me." This admission clearly negatives the possibility of there being any other eye witness to corroborate the interested word of this witness. He also seems to be well disposed in favour of the employer in so far as, he is at present the Production Manager, to which post he was promoted after this incident.

20. The last witness examined by the employer is Shri V. G. Majilikar. In the year 1980, he was serving as a Supervisor with Party II. He has deposed about the incident of obstruction which took place on 27-12-80 and thereafter he has stated as to what took place in the eveining on 31-12-80. According to him, he and the other supervisor by name Uday crossed the gate to go to the bus stop where a workman by name Peter Antao accosted him by saying that on 27th he had not done a right thing. Thereafter fifteen to sixteen workers came around and they encircled him. He then remembered and stated the names of some of the workers who asked him to tender apology. Finally, he has stated that one of the workers kicked him when he bent down to apologise. Thereafter the matter was communicted to Mr. Neurekar. Finally, he has stated that he was sent to the Doctor at Primary Health Centre Dr. Kamat treated him. Now, I have already pointed out that according to Mr. Karmali Dr. Kamat is a private practitioner having his own Hospital where he claims to have treated some injured persons. Quite contrary to this, he was treated at the Primary Health Centre by Dr. Kamat and according to Shri Karmali, Dr. Ramesh Babu was in charge of that Hospital. This witness has also stated that he had taken treatment from a Private Doctor and even in examination in chief he has had to admit that he did not remember the name of that Doctor. In his cross examination he had stated that about 15 to 16 workers were standing near the bus stop and after the incident was over all the injured persons went to the Primary Health Centre and thereafter to the Police station. Thus, he has referred to the name of Dr. Kamat because according to him he had seen him during the evidence in Vasco Court. However, as I have stated earlier Dr. Kamat was not a witness for the prosecution and hence this witness had again stated that he had seen Dr. Kamat in Vasco Court, but his evidence was not recorded. When Dr. Kamat was not a witness for the prosecution, it is difficult to understand as to how this witness asserts that he had seen Dr. Kamat in the court premises. Finally, it was suggested to this witness that as to whether his statement was recorded in the criminal court. To this question he has admitted thus, "As far as I remember, my statement was not recorded in the Court of J. M. F. C. at Vasco. It is not true to say that infact my statement was recorded in that court."

21. After the above referred admissions were given by this witness during his cross examination, a request was made by Shri Karmali that he would bring the certified copy of the previous statement of this witness recorded in the Magistrate's court to contradict him. His request was granted and on the adjourned date Shri Karmali produced a certified copy of the deposition of this witness which can be found at Exb. w-6. after he was confronted, he had, had to admit that his deposition was recorded in the Magistrate's Court. He has also testified to the correctness of this statement. Thus, here is a witness who has an audacity to state on oath in the beginning that he did not figure as a witness on behalf of the employer in the criminal case. However, when he was confronted he had to admit that his statement was recorded. This circumstance clearly goes to show that this witness has no regard for truth and as such his evidence does not repose any confidence. He has also admitted that he had no certificate in respect of his injuries. Thus, considering the entire evidence of this witness, I have come to an irresistible conclusion, that he has not given a true version of the main incident and after a lapse of about 10 years from the alleged incident, he has come forward to make some stray allegations against some of the workers but not all. Moreover, as admitted by Mr. Kiran Naik none except him was present when he was allegedly belaboured. Thus the evidence of this witness does not coroborate the statement of witness Kiran Naik. According to this witness, one Uday was present but his evidence has not been recorded. Now, according to Kiran Naik, two more persons namely his brother and one Mukund who had come to rescue him were also assaulted by the workmen. However, none of them has been examined although Kiran claims that Mukund was severely beaten with the result that he had bleeding injuries on his face. Infact there should have been no difficulty for the employer to lead the evidence of Mukund who according to Kiran Naik had sustained serious injuries. Thus, the none examination of the material or important witnesses leads me to drawn an adverse inference against the employer.

22. Thus, after having anxiously considered the entire evidence led by the employer, I have come to an irresistible conclusion that it falls too short to prove the alleged misconducts i. e. obstruction to truck, criminal intimidation and assault and hence it will have to be concluded that the charges levelled against the workmen were not at all proved.

23. Once it is held that the charges on the basis of which alleged mis-conduct on the part of 9 workers have failed, it follows that the

order of termination of 9 workers passed by the employer will have to be struck down. Once it is struck down, it further follows that the workers will be entitled to reinstatement with full back wages. Shri Karmali, the learned advocate for the workmen has rightly invited my attention to a ruling reported in AIR 1960 SC 762, wherein it has been observed thus:

> "Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim re-instatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands."

24. However, in the present case some events have occurred after the impugned order of retrenchment was passed and hence I will have consider as to whether 9 workers, wrongfully discharged can be reinstated in service. Now, the evidence on record discloses that from the beginning of 1980 the workers went on strike which continued for a long period whereby the production in the factory came to a stand still. It has been also urged by Shri B. G. Kamat, the learned Advocate for the employer that from 1981 onwards the employer's financial condition deteriorated to such an extent that the employer had to incur heavy losses. On behalf of the employer an affidavit of Shri R. V. Neurekar has also been filed along with the copies of balance sheets to emphasise the employer's contention that since the Company has incurred heavy losses, the working had to be stopped. In the said affidavit in para. 2 Neurekar has stated that he has given a correct pictures of financial position of the employer's company by producing balance sheets of Profits and Loss Accounts. In para. 3, he has stated that accumulated losses are to the tune of Rs. 83,96 lacs. In para. 4, it has been stated that the plant and machinery in the Employer Company's factory at Sancoale Industrial Estate, where the workers were working has been attached under Order dated 14th August, 1985 of the Hon'ble Civil Court at Vasco-da-Gama, Goa. The attached property is also to be auctioned and it was to be auctioned on 4-10-1991. In para. 5 of the affidavit it has been stated that all the manufacturing activities in the employer's factory have been suspended from August, 1991 on account of paucity of funds and the workers have been laid off without wages pending termination of their services. Hence, the workers have also approached the Labour Court by filing application u/s 33-c(2) of the I. D. Act for claiming their unpaid wages. Hence, in para. 7 of the affidavit it has been submitted that all these circumstances which occurred during the pendency of this dispute should be taken into account by the Tribunal while granting any relief to the workers.

25. All these circumstances clearly go to show that since the employer's factory is not working the nine workers or any of them cannot be reinstated in service. Hence, it has been urged by Shri Karmali and rightly in my view that in lieu of their relief of reinstatement some of the workers will have to be paid wages and retrenchment compensation. To support his submission in this behalf Shri Karmali has relied upon a ruling reported in 1969 SCC 192=1970 2 LLJ 44 wherein it has been observed by their lordships thus:

> "Dismissal being illegal full wages should be paid to him besides payment of retrenchment compensation under Section 25 F instead of under proviso to S.25. FFF."

Thus, it has been urged by Shri Karmali that in view of the aforesaid observations, the employer cannot escape his liability to pay compensation from the date of wrongful termination till the date of closure.

26. After having considered that the workers would be entitled to full back wages, I will have to consider how many of them are really entitled to this relief. Now in all 9 workers are involved in the present dispute. Out of them 2 workers at Sr. 1 and 7 respectively by name Milagres Godinho and Roque Quadros are serving abroad as admitted by the Union's Secretary by name Caetano M D'Silva in his cross examination. These two workmen did not appear in this proceedings to give evidence and rightly because they are serving abroad. Hence, in my view since they have been gainfully employed elsewhere and in as much as they did not actually participate in this proceedings, I hold that they are not entitled to any relief whatsoever.

26. As far as the workman at Sr. No. 9 Caetano M. D'Silva is concerned, it has been shown that he is working with Costa River Transport on Rs. 1900/- p. m. He has been examined in this proceeding and in his cross examination he has clearly admitted, "Since last two years, I am in service with Costa River Transport and I am getting Rs. 1900/- p.m. I now say that I do not claim and press the case for reinstatement but I say that I may be paid back wages for the period for which I was left without service and was un-employed." Then, the workman at sr. No. 2 Benedit Fernandes, it has been brought on record that he is serving at Central Workshop on Rs. 1000/- p. m. In his cross examination he has admitted thus, "After the removal from service, I worked at the Central Workshop from 1985-86. I was getting salary of Rs. 1000/- p. m. I was working on temporary basis and so I had to leave the job." As far as the workman at sr. No. 6 Kabasingh Naik is concerned, his evidence discloses that he is serving in New Era Handling Agency and getting Rs. 550/- p.m. where he is serving since the last 3 years. This has been clearly admitted by him in his cross examination. The workman at sr. No. 3 by name Suresh Gawas and the workman at sr. No. 8 viz. Chandrakant Mahale are earning their livelihood by working in their paddy fields and Manguesh Powar is serving as Agricultural labourer. This fact has been admitted by all of them in their cross examination. The last workman is Yeshwant Sawant at sr. No. 4. He has admitted in his cross examination that he is doing the work of painting casually.

27. Thus, considering the aforesaid evidence, it clearly seems to me that the workman at sr. Nos. 2, 3, 4, 5, 6, 8 and 9 would be entitled to the back wages from the date of termination of their services till the closure of the factory and they will be entitled to arrears which will have to be computed after deducting their earnings which they gained during the intervening period. I, therefore hold that these seven workmen are only entitled to the monitary benefit which will have to be worked out in the light of the above referred observations. In view of this conclusion, I answer the issue referred to this Tribunal in the negative and pass the following order:

ORDER

It is hereby declared that the action of the management of M/s Zuari Marine Industries Private Limited, Vasco-da-Gama, Goa, in terminating the services of the nine workmen above named, with effect from 6-3-1981 is not legal and justified and hence the order of their termination is hereby set aside.

2. The workmen at serial No. 1 - Shri Milagres Godinho and the workman at sr. No. 7 - Shri Roque Quadros are not entitled to any relief whatsoever since they have been gainfully employed and serving abroad.

3. However, the workman at sr. No. 2 - Shri Benedict Fernandes sr. No. 3 - Shri Suresh Gawas, sr. No. 4 Shri Yeshwant Sawant, sr. No. 5 - Shri Mangesh Pawar, sr. No. 6 - Shri Kabasingh Naik, sr. No. 8 - Shri Chandrakant Mahale and the workman at sr. No. 9 Shri Caetano M. D'Silva are entitled to the full back wages from the date

of termination of their services i.e. 6-3-81, till the date of closure which shall be determined after deducting the earnings of these 7 workers which they received during the intervening period and the balance, if any found, shall be paid to them.

4. No order as to costs. Inform the Government accordingly.

Sd/-

(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 27th February, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI.

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/60/90

Shri B. A. Sahakari — Workman/Party I
v/s
M/s Sanjivani Sahakari
Sakhar Karkhana Ltd. — Employer/Party II

Workman represented by Adv. A. Diniz
Employer represented by Shri P. K. Lele.

Panaji, Dated: 22-1-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, the Government of Goa, by its order No. 28/66/90-LAB dated 17-12-1990 has referred the following issues for adjudication by this Tribunal:

(a) "Whether Shri B. A. Sahakari, Labour Welfare Officer in M/s Sanjivni Sahakari Sakhar Karkhana Ltd., Tisk, Ponda, is a workman under the Industrial Disputes Act, 1947 ?

(b) If so, whether the action of the management of M/s Sanjivani Sahakari Sakhar Karkhana Ltd., in terminating the services of Shri B. A. Sahakari, Labour Welfare Officer, with effect from 17-9-1998 is legal aand justified ?

If the answer to (b) above is negative, to what relief the workman is entitled ?".

2. On receipt of the above referred reference, a case at No. IT/60/90 was registered and notices were issued to both the parties, in response to which they appeared and submitted their pleadings on the basis of which the issues were framed at Exb. 10 and thereafter the matter was posted for evidence. However, during the pendency of this case, it was submitted by Adv. L. Diniz for the Workman that his client has preferred an appeal which is pending before the Hon. Minister for Labour and hence the recording of evidence be adjourned. Thereafter, one more adjournment was sought and finally on this day i.e. 22nd January, 1992, adv. Diniz for the workman filed an order passed by the Hon. Minister for Labour (Luisinho Faleiro) under which, the order of termination passed by Party II-M/s Sanjivani Sahakari Sakhar Karkhana Ltd., was held to be illegal and against the principles of natural justice and hence the same has been set aside (vide Exb. 17).

3. In view of this position, it has been very fairly conceded by Shri Diniz for the workman and Shri P. K. Lele for Party II that the present reference does not survive for consideration and that the same should be disposed of. I, therefore accept the submission made by the learned advocates for both the sides and pass the following order.

ORDER

The reference stands disposed of with no order as to costs.

The Government be informed accordingly, about the passing of the order.

Sd/-
(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

Order

No. 28/46/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 6th March, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/1/89

Workmen ... Party I-Workmen
V/s
M/s Hindustan Ciba Geigy Limited. ... Party II-Employer

Workmen represented by Adv. A. Nigalye.
Employer represented by Adv. C. Pawaskar.

Panaji: Dated.: 21-2-1992.

AWARD

This is a reference under S. 36-A of the Industrial Disputes Act, 1947. The Government of Goa, by its letter No. 28/46/88-ILD dated 14th Dec., 1988 has made a reference to this Tribunal for interpretation of clauses 11, 12 and 20.10 of the Settlement arrived at between M/s Hindustan Ciba Geigy Ltd., Santa Monica Plant, Corlim, Goa and their employees represented through Hindustan Ciba Geigy Ltd., Employees' Union (Goa), since the said Govt., was of the opining that a difficulty or douft has arisen as to the interpretation of the said clauses in the said settlement.

2. On receipt of this reference, a case at No. IT/1/89 u/s 36-A (1) of the I. D. Act, was registered and notices were sent to both the parties, in response to which, they appeared and submitted their pleadings.

3. Party I-Workmen (hereinafter called as the 'workmen') have filed the statement of claim (Exb. 2) wherein they have averred as follows:

The question referred to this Tribunal for interpretation u/s 36-A of the I. D. Act, relates to the rate and quantum of daily wages for the purpose of calculation of overtime, payment of shift Allowance in terms of the settlement dated 29th March, 1985 and a formula for calculation of overtime payment and shift allowance. It has been averred that Party II- M/s Hindustan Ciba Geigy Ltd., (hereinafter called as 'Employer-Company') is a company registered under the Companies Act, 1956, having its registered office at Bombay. The Company is a part of multi-national organisation which has establishments and subsidiaries in different countries engaged in multi-pronged business and industrial activities. The Employer-Co., owns a factory at Corlim in Goa, known as "Santa Monica Plant" where it manufactures pesticides and other chemical products. The Company has employed more than 500 employees in its establishment who belong to different categories such as Technical, Clerical, Subordinate and Operational staff and comprise of highly skilled, skilled, semi-skilled and un-skilled personnel. The workmen employed in the above referred concern had organised themselves and are the members of Trade Union named and styled 'Hindustan Ciba-Geigy Limited Employees Union (Goa)'. This union is a representative body of all workers employed in the Santa Monica Plant and is registered under the Trade Unions Act. The workmen represented by the Union entered into several settlements from time to time, during the last 20 years, whereby the service conditions of the employees were improved. The last of such settlement was signed on 29-4-1985, the interpretation of which is the subject matter of this dispute. The said settlement is a bi-partite settlement signed under the provisions of Sec. 2 (p) of the I.D. Act, 1947 and was signed after due deliberations by both the sides. Thus, the said settlement is in operation and is binding on the parties thereto. Under the said settlement certain terms and conditions of the workmen were altered. The employees became entitled to higher wages and allowances than those prevailing before the settlement. The working hours of the workmen were reduced under the settlement as the concept of 5-days week or 22-days month was introduced in the establishment. However, it was envisaged in the settlement that the reduction of working hours would not affect the productivity of the workmen and that the quantum of manufactured goods would not be reduced with the same labour force, which is evident from the Clauses of the settlement i. e. 12-11 and 20-10 (which have been reproduced in the statement of claim). It is the case of the workmen that prior to this settlement they were required to work for 6 days in a week and thus for an average of 26 days in a month. Likewise, their daily and hourly wages were calculated considering 26 days as working days of a month and the remaining days were their weekly offs which were not taken into consideration in the calculation of daily and hourly wages. It is the say of the workmen that the hourly wages were calculated on the basis of daily wages and over time payment and shift allowances were paid on the basis of daily and hourly wages so arrived at. However, the situation changed drastically after the introduction of 5 days a week. After the said settlement was signed the workmen were required to work for only 5 days in a week or on an average of 22 days in a month and the remaining days were their off days. It was therefore natural that their daily wages ought to have been calculated on the basis of monthly payment of wages for 22 working days i. e. by dividing their monthly wages by 22 and not by 26 days as was done before the settlement. Thus, it is the contention of the workman that the practice of dividing monthly wages by 26 is not a correct procedure but it should have been divided by 22, in view of the terms and conditions of the settlement. Thus, on account of the above referred practice in calculating overtime wages, the workmen were put to financial loss and hence they protested against this method by approaching the Union leaders. As the matter could not be mutually settled, the Union approached the Labour Commissioner. The employer-Company appeared in conciliation proceedings and contended that it is paying the said allowances in terms of clause 20.10 of the settlement. It was also the contention of the company that it was following the "existing practice". However, there was no settlement and it was agreed between the parties that since there is a dispute relating to the interpretation of the terms of settlement, the union decided to invoke the provisions of Sec. 36-A of the Act. Accordingly, the Government was requested by the union and eventually the Govt. was pleased to refer this dispute to this Tribunal for adjudication. It has been prayed that this Tribunal should be pleased to interprete, hold and declare that the daily and hourly wages for the purpose of payment of overtime work and shift allowance should be calculated on the basis of 22 working days in a month and on that basis, the workmen should be given monetary benefits to which they are entitled.

4. Party II-M/s Hindustan Ciba-Geigy Limited (hereinafter called as 'Employer-Company'), has resisted the workmen's claim by filing elaborate written Statement at Exb. 3, wherein it has been contended thus: That the reference made by the Government u/s 36-A of the I. D. Act is not at all maintainable in law in so far as they relate to overtime remuneration and shift allowance which are neither ambiguous nor imprecise and there is no difficulty or doubt in interpreting the terms thereof. Hence, it has been submitted that this reference is undoubtedly uncalled for. The Employer-Company has denied the contents of para. 2 of the statement of claim and it has been contended that the issues which have been mentioned in the said para have not been referred by the Government for interpretation u/s 36-A of the I. D. Act. It is submitted that the issue which has been referred to for interpretation is in respect of clause 20.10 of the settlement dated 29-4-85. That clause reads as under:

> 20.10. For the purpose of calculating rate of pay/salary per hour for overtime payment/holiday work payment the existing practice shall continue."

5. It will be seen from the above referred clause that it relates to the payment of overtime remuneration and there is no doubt or difficulty as regards the interpretation of the said clause. It is submitted that no reference has been made as to the rate and quantum

of daily wages for the purpose of calculation of overtime payment and /or shift allowance under the terms of settlement. Further more, no reference has been made by the Government in regard to the formula for calculation of overtime payment and shift allowances. Hence, it has been contended that the Union under the garb of interpretation, tries to raise a new demand for consideration by this Tribunal which is not permissible. Having regard to the provisions of Sec. 36-A of the I. D. Act, the Tribunal is required to confine its jurisdiction to the question of interpretation of clause 20.10 only and cannot traverse beyond it. It is further contended that the Company's factory runs on a continuous process basis on all the days of the week throughout the year. The workmen work in shifts which are three in number besides one general shift. In the first shift, the workmen work for 5 days followed by one weekly off and the workmen in the 2nd and 3rd shift work 5 days with two weekly offs in a week and the other workmen who work in General shift work for 5 days with two weekly offs in a week. Prior to the settlement dated 29-4-85 all the workmen were working for 48 hours in a week regardless of the shifts, but after the settlement the workmen working in the General shift are required to work for 42 $^{1}/_{2}$ hrs. a week and those employed in the shifts work on an average for 42 hours in a week. The Company contends that pursuant to the settlement dated 29-4-85, the concept of five day week or 22 days working, was introduced in the factory. Though there was a reduction in the working hours, it was clearly stipulated in the Settlement that, it would not affect the productivity of the workmen and that the workmen shall increase their productivity in some areas. In this behalf, a reference has been made to clause 12 of the settlement which have been reproduced in the written statement. It has been submitted that although the workmen had agreed to increase production and productivity in fact there is no increase and the clauses relating to the productivity have not been complied with fully by the workmen. Hence, it has been denied that although the working hours were reduced, still the production had increased. As far as para. 9 in the statement of claim is concerned, it has been contended that the matter of shift allowance does not fall for consideration by this Tribunal u/s 36-A of the Act. It has been averred that the interpretation of clause 11 relating to the shift allowance is not the subject matter of enquiry by this Tribunal. Hence, the Company has refrained from making any submission in respect of the said allowance, but at the same time contends that the shift allowance is being paid as per the terms of settlement. It has been contended that for the purpose of calculating over time, the monthly rate of wages was divided by 26 and the quotient so arrived at is divided by figure 8. The Company submits that the existing system of calculation of overtime came into existence from 1st July, 1973. However, prior to that, the rate of overtime remuneration was calculated by dividing the monthly wages by figures 30 and the quotient so arrived at was further divided by the figure 8. However, pursuant to the representation made by the Union vide letter dated 25th May, 1973, a change was effected whereunder for the purpose of arriving at the hourly rate of wages for overtime remuneration, the monthly wage was divided by the figure 26 and the quotient so arrived at was divided by 8. According to the Company this formula is quite liberal and is in conformity with the practice adopted by several concerns. The Company has also made a reference to some of the rulings on this point and has contended that the rate of calculation adopted by it for the purpose of calculating overtime remuneration is quite liberal and does not suffer from infirmity. The Union was fully aware of this mode of calculation but it did not make a demand for a change in the said system. It has been contended that the Union itself asked for a change in the working hours and the introduction of 5 days week but there was no demand seeking any change in the method of calculation of overtime remuneration. The settlement clearly stipulates that the existing practice in respect of overtime remuneration shall continue. Furthermore, the settlement provides that the Union shall not raise any demand involving any financial burden on the Company. After this settlement the overtime remuneration was calculated and paid to the workmen as per the existing practice but the Union did not dispute the mode of calculation till December, 1987, when they sought a change in the method of calculation. This, according to the Company it amounts to a demand or change in the existing practice of calculation of overtime which is not permissible under clause 32.6 of the settlement. It is submitted that the existing practices are saved under clause 32.7 of the settlement and hence it is not open for the Union to make a claim which is inconsistent with the provisions of the Settlement during its subsistence. It has been contended that the number of working days has no relevance for the purpose of calculating overtime remuneration. In fact, in a number of cases, overtime remuneration is calculated by dividing the monthly wages by the number of days in a month and not the number of working days in a month. Thus, the claim of the union that the monthly wages should be divided by 22 working days is misconceived and untenable and, in effect, amounts to a fresh demand for change in the existing practice during the currency of the subsisting settlement which is not permissible. It has been contended that this reference was made by the Government at the instance of the Union. The Company was not a party to this arrangement since according to the company there is no difficulty in interpreting the clause 20.10 of the settlement. Finally, it has been submitted that no case exists or has been made out by the Union for giving a different interpretation to clause 20.10 of the settlement and hence the prayers made by the workmen deserve to be rejected.

6. Party I-Workmen by their rejoinder at Exb. 4 controverted the company's contentions and reiterated their stand stated in their statement of claims.

7. On these pleadings my learned predecessor framed the necessary issues at Exb. 5. However, thereafter it seems that an application at Exb. 6. was submitted on behalf of Party II stating therein that issues Nos. 2 & 3 framed by my learned predecessor relate to the shift allowance and as such they were redundant as the terms of reference made do not relate to the interpretation of the said issues. However, this application was rejected by my learned predecessor by his order below Exb. 6. However, thereafter my learned predecessor by his letter dated 13th July, 1989 requested the Under Secretary, Industries & Labour Secretariat, at Panaji, that the Government should consider the position and may pass appropriate orders taking into consideration the issues framed by the Tribunal in the matter. Pursuant to this letter, the Government was pleased to amend the reference by introducing "Clauses 11, 12" in the reference for interpretation by this Tribunal. (Vide Exb.8 dated 25th August, 1989).

8. Thereafter Party I by his application at Exb. 9 submitted that they have already filed a statement of claim in which they have covered the issues which are now incorporated in the amended reference and hence they did not desire to file any additional statement of claim.

9. However, Party II filed an additional written statement at Exb.10 wherein it has been contended thus: At the outset, the amendment effected is untenable in law in as much as, there are no difficulties or doubts in relation to the interpretation of clauses 11, 12 of the settlement dated 29-4-85. It has been contended that the order of

reference now made by amending the earlier order of reference is based on some misconception of law as to the true meaning and intent of section 36-A of the I. D. Act. It has been contended that a reference u/s 36- A is contemplated only when there is a doubt or difficulty in interpretation of the provisions of the settlement. Clauses 11 and 12 of the settlement relate to shift allowance and working hours and there has been no controversy as regards its provisions. Thus, it has been contended that the provisions relating to shift allowance and working hours as stated in the settlement are clear which require no interpretation. Without prejudice to the aforesaid contentions, the company has contended that the payment of shift allowance is regulated by clause 11 of the settlement and has furnished the provisions made in regard to the shift allowances effective from 1-1-1985. Thus, it can be seen from the above referred clauses that the workmen are entitled to shift allowance on the basis of actual attendance. The shift allowance is calculated on the basis of dividing of month's wage by 26 as per the practice in force prior to the settlement of 29-4-85 which continue without any change. It has been also stipulated in the settlement that under clause 11 itself, the other terms and conditions in regard to the grant of shift allowance shall remain in full force and effect. The only change that was effected in shift allowance was to increase the rate payable for the 3rd shift from 10% to 12% of basic plus D.A. Thus, the provisions of the clause relating to shift allowance are crystal clear and do not require any interpretation. As regards clause 12 of the settlement, it is not shown nor pleaded by Party I, that the provisions thereon are not clear and that they require interpretation. Incidently, it has been submitted that the union has failed and neglected to comply with the provisions of clause 12 of the settlement scrupulously and it is seeking modification in the agreed terms obliquely with a view to get unmerited financial benefits which should be discouraged.

10. Party I-Workmen then filed a rejoinder at Exb. 11, controverting the Company's contentions and reiterating their claim previously made.

11. On these pleadings, my learned predecessor framed the following necessary issues at Exb. 12.

ISSUES

1. Whether the Government of Goa, acceding to the request of the union did make a reference u/s 36-A of the Act as contended in para. 16 of the Statement of Claim?

2. Whether the reference made by the Government is maintainable and whether the provisions of the settlement relating to overtime remuneration and shift allowance in terms of clause 20.10 and 11 & 12 of the settlement are precise and without any ambiguity and clearly set out in the settlement as contended in para. 2 of the Written Statement Exb. 3. ?

3. If the reference is maintainable whether the paragraph "Existing Practice shall continue", in clause 20-10 of the settlement covers the rate of pay/salary for overtime and the same does not call for any interference as contended in para. 5 of the Written Statement ?

4. Whether this is an attempt on the part of the union to raise new demands under the garb of interpretation as alleged ?

5. If the reference is maintainable whether clause 20-10 should be so interpreted to hold that overtime work and shift allowance be calculated on the basis of a month consisting of 22 days and not on the basis of 26 days as is being all along calculated by the management ?

6. Whether the formula adopted for the purpose of calculating overtime remuneration adopted by Party II-management is liberal and is in confirmity with the practice in a number of concerns ?

7. What Order ?

12. My findings on the above issues are as follows for the reasons stated below:

1. In the affirmative.
2. In the negative.
3. Does not survive for consideration.
4. In the affirmative.
5. Does not survive for consideration.
6. Does not survive for consideration.
7. As per final order below.

REASONS

13. The rival contentions of the parties to this reference have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, some of the facts which are either admitted or which can otherwise be taken as duly proved from the evidence on record need be stated in the beginning. Now, the oral evidence in this case consists of testimonies of two witnesses, one on each side. On behalf of Party I-Workmen, Lourenco F. D'Souza, who is at present the General Secretary of the Union known as Hindustan Ciba Geigy Employees Union (Goa), has been examined at Exb.13. On behalf of Party II-Company Shri R. P. Rataboli, the Personnel Manager has examined himself at Exb.16 and both the parties have produced the relevant documents.

14. Now, it is a common ground that M/s Hindustan Ciba Geigy Limited, is a Company registered under the provisions of the Companies Act, 1956 having its Registered Office at Bombay. This Company is as part of a multi-national organisation which has establishments and subsidiaries in different countries engaged in multi-pronged business and activities. The Employer-Company has a factory at Corlim in Tiswadi Taluka which is known as "Santa Monica Plant" which manufactures pesticides and other chemicl products. For the purpose of carrying out its industrial activities, the Company has employed more than 500 employees and on the date on which the evidence was recorded the Gen. Secretary has stated that there are 460 employees of different categories. It is a common ground that the workmen employed in the Santa Monica Plant had organised themselves and formed a trade union styled as Hindustan Ciba-Geigy Limited Employees Union (Goa). All the workers were the members of this union. During the last 20 years as many as 4 settlements were arrived at in pursuance of the demands made by the workmen. The last of such settlement was arrived at on 29-4-85 which is the subject matter of this reference. Now, the evidence on record discloses that formally i. e. prior to the aforesaid settlement, the workmen used to work for 6 days in a week. However, there was a demand for (5) days week which was acceded to, by the Employer-Company and since 1985 the workers started working for 5 days in a week. This can be found in Annexure 4 of the settlement in question which is at Exb. 14. Now, as back as in the year 1973, the union had made a

representation to the Company's Manager by its letter dated 25-5-73. The said letter related to the payment of overtime wages. To this letter, the Company sent a reply dated 27th June, 1973. In para. 3 of this reply, it has been categorically stated thus:

"With regard to your demand regarding the basis for calculation of overtime, it is agreed that with effect from 1st July, 1973, the calculation of overtime will be done on the basis of a month consisting of twenty six days and a day consisting of eight hours." Thus, right from 1973 till the settlement in question, the practice of calculating overtime wages was on the basis of 26 working days in a month with 8 hours duty. Now, this was the position which existed on the date on which the settlement in question was arrived at on 29th April, 1985. In the settlement at Exb. 14 under a caption. "Overtime Payment", there are as many as 10 clauses. However, we are mostly concerned with clause 20.10 which reads thus:

20.10 "For the purpose of calculating rate of pay/salary per hour for overtime payment/holiday work payment the existing practice shall continue."

(Underlinding is mine for emphasize)

15. Thus, it is evident that although a demand for 5 days a week was acceded to in the settlement, still no change in calculation of overtime wages was either demanded nor was settled with the consent of both the parties. Had there been any demand or change of calculation of overtime wages, then I think the leaders of the union would not have failed to make a clear reference to that effect in clause 20.10 of the settlement. This position has been accepted even by the workmen's witness by name Lourenco F. D'Souza. In his cross examination, he has given some candid admissions which require reproduction ad verbatim. In his cross examination he has admitted thus:

"I was aware that the union had demanded 5 days week. It is correct that the company was calculating overtime wages by dividing the monthly wage by the figure 26. It is true that daily wages were calculated by dividing the monthly wages by 26 ..... Even before 1985 settlement the working hours were eight. The overtime wage was paid on the basis of 208 figure (i. e. 26x8=208). That was the practice of the company for calculating overtime wage. There was no demand for changing this formula. (Underlining is mine for emphasize). After settlement, we were paid on the same basis."

16. The above referred admission of the Gen. Secretary of the Union unequivocally go to show that when 5 days week was demanded, there was no demand for changing the formula for calculation of overtime wages and hence in clause 20.10 there was clear stipulation that the calculation for the overtime wages would be made on the existing practice.

17. To the same effect, there is the evidence of Mr. R. P. Retaboli, who is the Personnel Manager of the Company. He has stated in his evidence at Exb. 16 that prior to the settlement of 29-4-85 the method of calculating overtime wages was to divide monthly wage by 26 and the quotient was further divided by figure 8 to arrive at a hourly rate of wages. According to him, this method was followed since July, 1973. He has further stated that after the settlement of 29-4-85 the Company followed the same method of calculating overtime wages which was followed prior to the settlement. The settlement was immediately implemented. He has further stated, "The workmen did not raise any dispute for the above referred method although we were paying from 1985 till Dec., 1987. No representation was made after the settlement and it is my say that the workmen were satisfied by the above referred method." In his cross examination he has denied the suggestion that 26 days were calculated as average working days in a month. He has further added that the Company used to divide overtime wage by 26 and not by average working days. Finally, he has denied the suggestion that after the settlement the Company was supposed to divide by 22 as it was the average working days.

18. Thus, considering the oral evidence in the light of the clear and unambiguous terms of clause 20.10 of the settlement at Exb. 14, it is abundantly clear that although the Company accepted the workman's demand for 5 days week, still the previous practice of calculating overtime wage i. e. on the basis of 26 days in a month was not changed and there was absolutely no demand for any such change. The settlement was immediately implemented and for about 2 years i. e. till December, 1987 there was absolutely no grudge or a grievance made by the Union or the workmen for changing the said formula which was in existing right from 1973. It is on this basis, I now proceed to consider how far this Tribunal can be justified in acceding to the workmen's request for changing the formula for calculating overtime wage. At the cost of repetition, I would say that, it is the contention of the workmen that the calculation should be made by dividing 22 and not by 26. Obviously, if the workmen's contention is upheld, it follows that the company will have to pay more overtime wages whereby there would be additional financial burden on the Company. However no such additional liability is contemplated by the terms of the settlement and this position has been made amply clear by one clauses in the settlement at Exb. 14, which will have to be referred to at this juncture.

19. Clause 32.6 lays down thus:

"The Workmen appreciate that the Settlement is a pack-age deal and they agree that all other demands covered by the Charter of Demands dated 28-1-85 and which are not specifically dealt with herein were discussed and settled as withdrawn and further that during the operative period of this Settlement, they shall not raise, pursue or agitate any demands fully or partially settled herein or any demands not pressed by them and settled as withdrawn herein, or any other demands involving financial liability of the Company."

Now, the above referred term in the settlement is clear and unambiguous and it absolutely prohibits the workmen from making any such demand which would expose the Company to additional financial liability.

20. Now, this is a reference u/s 36-A of the Industrial Disputes Act. The said Section reads thus:

S. 36-A: *Power to remove difficulties:-* If, in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit."

Now, it has been urged by Shri Pawaskar for the Employer-Company that in fact there was absolutely no difficulty or ambiguity

in clause 20.10 of the settlement and hence the Government should not have made this reference. There appears a substantial force in this submission. Now, Sec. 36-A was added in the year 1956 and the object of this Section is to enable the appropriate Government to refer any difficulty or doubtful provision of a previous award or settlement to a Labour Court or Tribunal or National Tribunal for interpretation. However, before such a reference is made, the Government should have formed its opinion as to the existence of any difficulty or doubt over the interpretation of any provision of such award or settlement (Vide Kirloskar Oil Engines Ltd., V. Its Workmen, 1961, II. L. L. J., 675 (S.C.). This scope of enquiry u/s 36-A is limited to resolving of difficulty or doubt and by interpreting any provisions of an award or settlement. In other words, if the words used in any provision of an award or settlement are ambiguous or obscure and it is not reasonably possible to interpret them, the difficulty arising from the use of any such ambiguous or obscure words may be sought to be resolved by moving the appropriate Government to make a reference under S. 36-A of the Act. However, it is obvious that any question about the propriety, correctness or validity of any of the provisions of an award of settlement would be outside the purview of the enquiry contemplated by the Section. Further-more, a proceeding contemplated under S. 36-A is not a proceeding intended to enable the Tribunal to review or modify the order of reference. It is intended to enable the Tribunal only to clarify the provisions of an award or settlement where a difficulty or doubt arises about the interpretation of its provisions. In the case of Kirloskar Oil Engines Ltd. (Supra), it has been observed by his Lordships Hon. Shri Gajendragadkar J., that where the employer was seeking modification of the provisions of an award regarding accumulation of sick leave and relief, payment of wages for work on a weekly-off or a holiday in proceedings under S. 36-A of the Act, it was not permissible, in view of the limited scope of the enquiry u/s 36-A of the Act. Similarly, under S. 36-A a reference cannot be made in order to supplement the original award. All that can be referred under this section is a question involving the interpretation of difficult, doubtful or ambiguous provisions of an award or settlement. Thus a reference purporting to be under S. 36-A of the Act, which is in fact intending to supplement the original award would be invalid.

21. Thus, considering the limited jurisdiction within which the Tribunal has to deal with a reference u/s 36-A of the Act, I have come to an irresistible conclusion that the workmen's demands for change of formula in calculating the overtime wages cannot possibly be entertained. The words used in clause 20.10 i. e: the existing practice shall continue are clear and unambiguous and they do not present any difficulty or doubt in their interpretation. At the cost of repetition, I would say that the existing practice for calculation of overtime wages was to divide by 26 and although a five days week was introduced, meaning thereby that there would be 22 working days in a month, still the above referred formula which was in existence from 1973 onwards was not changed and there was absolutely no demand for any such change in the discussions which were made between the union leaders and the Company's representatives. In view of this state of affairs, I hold that the workmen are not entitled to claim any change in the formula which was in existence at the time of settlement arrived at on 29-4-85. This conclusion itself decides the issue that has been referred to by the Government to this Tribunal and further submissions which have been made by the learned Advocates for both the sides, require no consideration. However, I will shortly deal with the submissions which have been made on behalf of both the sides. Now, it has been urged by Shri Nigalye, the learned Advocate for the workmen that if there is any doubt in interpreting the terms of the settlement the benefit of such doubt must necessarily be given to the workmen. To support this submission, in this behalf, he has relied upon a ruling reported in AIR 1978 S. C. 475 (K. C. P. Employees' Association, Madras v. the Management of K. C. P. Ltd.,) wherein it has been observed that in Industrial Law interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. To the same effect, there are the observations of the Kerala High Court in the case of P. Radhakrishnan Nair, Petitioner v. K. S. R. T. C. & another, reported in 1983 LAB. I. C. 276. In this case also, it has been observed, "If there is any ambiguity then the construction should lean in favour of the labour". A reliance has also been placed on one more ruling reported in 1984 LAB. I. C. 1158 in the case of Jeewanlal (1929) Ltd. etc. etc.V. Appellate Authority under Payment of Gratuity Act and others. Relying on this ruling, it has been urged by Shri Nigalye that although it has been observed that monthly wages last drawn by the worker should be treated as wages for 26 working ways and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days. Still in para. 10, there is an observation that the monthly wages are paid for actual working days. However, at the outset, it will have to be observed that the observations made in the above referred rulings are absolutely of no assistance to Shri A. Nigalye in as much as, in this reference u/s 36-A of the Act, I am mostly concerned with the interpretation of the words used in clause 20.10. I am not at all called upto to consider as to whether the formula adopted by the Company by dividing the monthly wage by 26 and 8 is proper or otherwise. The same observations can be made in respect of the submissions made by Shri Pawaskar, the learned Advocate for the Employer-Co. He has tried to justify the Company's action for adopting the formula of dividing monthly wage by 26 & 8. To support his submission in this behalf, he has relied upon two rulings of our High Court to which a reference will have to be made in brief.

22. In the case of May & Baker (India) Ltd., Bombay v. J. S. Coutinho, National Union of Commercial Employees, and Ors, reported in 1 CLR, 41, a question arose as to how the wages should be calculated because the Company was working for 22 days in a month. His Lordship Hon. Pendse, J., by relying upon a Supreme Court ruling in the case of Digvijay Woollen Mills Ltd. v. Mahendra Prataparai Budh, 1980, (2) LLJ 252 found that for arriving at a day's wage, 26 working days of a month should be taken into consideration. To the same effect, there are the observations of his Lordship Hon. M. L. Dudhat, J., in the case of Hindustan Lever Limited, Bombay v. Kasargod Devidas Rao and others. This was also a case under the Payment of Gratuity Act, 1972 wherein his Lordship observed that in order to arrive at a figure, monthly wage should be divided by 26 days. However, I have stated earlier, although the above referred observations support the submissions of Shri Pawaskar for the Company, still at the cost of repetition I would say that I am not called upon to consider the legality propriety or otherwise of the formula adopted by the Company and hence I hold that the last submissions made by the learned Advocates for both the sides have very little relevance in this case.

23. Thus, to conclude, I hold that there is absolutely no difficulty or doubt in interpreting clause 20.10 of the settlement and hence it has been rightly urged by Shri Pawaskar that this reference u/s 36-A was really uncalled for.

24. By an amendment to the original reference, the Government has also referred two more clauses namely clause 11 and 12 of the settlement for interpretation. Now, clause 11 of the settlement dated 29-4-85 relates to the shift allowance. It lays down thus:

> 11. *Shift Allowance:* "Effective 1-1-1985 permanent workmen who are eligible shall be paid shift allowance at the following rates on the basis of the actual shift attendance
>
> | | |
> |---|---|
> | IInd Shift | 8% on Basic + D. A. only |
> | IIIrd Shift | 12% on Basic + D. A. only |
>
> Other terms and conditions in regard to grant of this allowance shall remain in full force and effect".

25. The demand at sr. no. 12 is in respect of working hours which contains clauses (a) to (h). Now, Mr. Lourenco F. D'Souza who has been examined on behalf of the workmen has stated in his deposition at Exb. 13 that as far as shift allowance is concerned, the above referred principle should have been followed i. e. by dividing by 22 days. However, the Company calculated by dividing 26 days in a month. He, therefore wants a change in the formula. Shri R. P. Rataboli, the Personnel Manager examined on behalf of the Company has stated in his evidence at Exb. 16 that for calculating the shift allowance per shift, per day, the same formula which was applied for

overtime wages was followed. He has further stated that, on the same lines, the Company was paying shift allowance prior to the settlement and further added, "The workmen did not claim for any change in the method of calculating before or after the settlement". Thus, for the reasons herein before stated, I hold that the wording of clause 11 is not at all ambiguous nor does it present any difficulty in its constructions and hence the workmen's claim on this behalf cannot be entertained.

26. Same is the case with working hours which was a demand at sr. no. 12 made by the workmen. The wording used in the several clauses appended to this demand are clear and unambiguous and hence I hold that there is absolutely no difficulty in interpreting the same for the reasons herein before stated.

27. In view of my conclusions in the foregoing paragraphs, I answer the first issue in the affirmative. Issue No. 2 will have to be answered in the negative since the words used in clauses 20.10, 11 and 12 of the settlement are precise and without any ambiguity and clearly set out in the settlement. In view of my finding on issue no. 2, issue No. 3 would not survive for consideration. Issue No. 4 will have to be answered in the affirmative since the union has tried to raise new demands under the garb of interpretation of the settlement. Issue No. 5 does not survive for consideration, in view of the findings on the foregoing issues. Issue No. 6 will not survive for consideration since the same cannot be considered in the limited jurisdiction conferred u/s 36-A of the Act.

28. In view of these findings, I pass the following order:

ORDER

It is hereby declared that the wording used in the clauses 11, 12 and 20.10 of the settlement arrived at between the parties and dated 29-4-85 are clear and unambiguous and they present no difficulty in their interpretation and hence the present reference is not maintainable under S. 36-A of the Industrial Disputes Act.

No order as to costs.

Inform the Government accordingly, about the passing of the award.

Sd/-

(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

Order

NO. 28/2/87-LAB (Part II)/10864

On recommendation of Goa Public Service Commission, Panaji, Vide their letter No. COM/II/12/28 (I)/97 dated 10th September, 1998, the Government of Goa, is pleased to confirm Shri Ajit Jairam Agni against the post of "Presiding Officer", Industrial Tribunal and Labour effect from 20-5-1997.

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Commissioner and Ex-Officio Joint Secretary (Labour).

Panaji, 22nd September, 1998.

Department of Revenue

Notification

No. 22/51/97-RD

Read: Notification No. 22/51/97-RD dated 9-7-97 regarding L. A. for Playground and further extension of Government High School, Sawardem, Satari published in the Official Gazette (Supplementary) Series II No. 20 dated 14-8-97 page 304 and in local newspaper Tarun Bharat dated 28-7-97 and Navhind Times dated 25-7-97.

In the Schedule to the Notification cited above, the area shown against survey No. 1/3 part shall be read as 1100 sq. mts. instead of 3575 sq. mts. and against survey No. 7/3 part the area shall be read as 3575 sq. mts. instead of 1100 sq. mts.

By order and in the name of the Governor of Goa.

A. M. Bhandare, Under Secretary (Revenue).

Panaji, 9th December, 1998.

Notification

No. 22/1/97-RD

Read:- Government Notification No. 22/1/97-RD dated 8-10-97 published in the Official Gazette Series II No. 41 dated 8-1-98 on pages 636-637 and in 2 newspapers viz. Herald dated 24-10-97 and Navprabha dated 29-10-97 regarding widening of road from Merces to Chimbel.

In the notification cited above, the names of the interested persons in respect of Survey No. 2/1 viz. "Smt. Bhavani Sinai and Shri Dattaram Sinai" shall be deleted and in their place the name "Fabrica da Igreja des Merces" shall be read.

By order and in the name of the Governor of Goa.

A. M. Bhandare, Under Secretary (Revenue).

Panaji, 10th December, 1998.

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